



IT IS ORDERED

Date Entered on Docket: December 19, 2017

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The Honorable David T. Thuma  
United States Bankruptcy Judge

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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW MEXICO

In re: CLANCY MAURICE DEAN,

Case No. 17-12886-t7

Debtor.

**STIPULATED ORDER GRANTING MOTION FOR RELIEF FROM THE  
AUTOMATIC STAY AND ABANDONMENT OF PROPERTY**

This matter came before the court on the stipulation of relief from the automatic stay and abandonment, between the Creditor, First America Bank (“Creditor”), and the Debtor, Clancy Maurice Dean (“Debtor”), by and through its respective attorneys of record, and the Chapter 7 trustee.

The Court, having reviewed the agreement as expressed in this Stipulated Order and being otherwise sufficiently informed, FINDS:

(a) The Court has jurisdiction over the parties and the subject matter of this Stipulated Order.

(b) This stipulation relates to the following property: Inventory, equipment, fixtures, and lease of real estate of Kaleidoscoops Ice Cream Store and More; 43420 N. Grimes, Suite 300; Hobbs, NM 88240 (the "Property").

(c) The parties wish to stipulate to the stay relief, as provided in this Stipulated Order.

(d) No notice to other creditors of the stay relief is necessary.

**IT IS THEREFORE ORDERED:**

1. The Motion is hereby granted, and pursuant to 11 U.S.C. § 362(d), Creditor and any and all holders of liens against the Property, of any lien priority, are hereby granted relief from the automatic stay:

(a) To enforce their rights in the Property, including foreclosure of liens and a foreclosure sale, under the terms of any prepetition notes, mortgages, security agreements, and/or other agreements to which Debtor is a party, to the extent permitted by applicable non-bankruptcy law, such as by commencing or proceeding with appropriate action against the Debtor or the Property, or both, in any court of competent jurisdiction; and

(b) To exercise any other right or remedy available to them under law or equity with respect to the Property.

2. The Trustee is deemed to have abandoned the Property from the estate pursuant to 11 U.S.C. § 554 as of the date of entry of this Order, and the Property therefore no longer is property of the estate. As a result, Creditor need not name the Trustee as a defendant in any state court action it may pursue to foreclose liens against the Property.

3. The automatic stay is not modified to permit any act to collect any deficiency or other obligation as a personal liability of the Debtor, although the Debtor can be named as defendant in litigation to obtain an in rem judgment or to repossess the Property in accordance with applicable non-bankruptcy law.

4. This Order does not waive Creditor's claim against the estate for any Deficiency owed by the Debtor after any foreclosure sale or other disposition of the Property. Creditor may file an proof of claim as to any distribution if such notice is given by the trustee should it claim that Debtor owes any amount after the sale of the Property.

5. This Order shall continue in full force and effect if this case is dismissed or converted to a case under another chapter of the Bankruptcy Code.

6. This Order is effective and enforceable upon entry. The 14-day stay requirement of Fed.R.Bankr.P. 4001(a)(3) is waived.

7. This Stipulated Order shall be binding and effective upon any conversion of this case to another chapter under the Bankruptcy Code.

### END OF ORDER ###

RESPECTFULLY SUBMITTED,

MARTIN & LUTZ, P.C.

By S/ submitted electronically  
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AGREED TO BY:

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[Agreed via email on 12/14/2017]

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Trustee

[Agreed via email on 12/12/2017]

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